

UNITED STATES DISTRICT COURT		District
Name of Movant JAMIE GARCIA	Prisoner No. 24098-038	Case No. 1:02-10004-001-WGY
Place of Confinement FEDERAL CORRECTIONAL INSTITUTION "LA TUNA"		ANTHONY, NM. TX.

UNITED STATES OF AMERICA.

V. JAMIE ROLAND GARCIA ROMERO

(name under which convicted)

MOTION

04 11236 W69

1. Name and location of court which entered the judgment of conviction under attack U.S. DISTRICT COURT DISTRICT MASSACHUSETTS

2. Date of judgment of conviction 10/21/02

3. Length of sentence 57 MONTHS

4. Nature of offense involved (all counts) 8 USC & 1326: ALIEN IN U.S. AFTER DEPORTATION

5. What was your plea? (Check one)

- (a) Not guilty ☐
 (b) Guilty ☒
 (c) Nolo contendere ☐

If you entered a guilty plea to one count or indictment, and not a guilty plea to another count or indictment, give details:

N/A

6. If you pleaded not guilty, what kind of trial did you have? (Check one)

- (a) Jury ☐ N/A
 (b) Judge only ☐

7. Did you testify at the trial?

Yes ☐ No ☒ N/A

8. Did you appeal from the judgment of conviction?

Yes ☐ No ☒

9. If you did appeal, answer the following:

(a) Name of court _____ N / A _____

(b) Result _____ N / A _____

(c) Date of result _____ N / A _____

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any federal court?

Yes ☐ No ☒

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court _____ N / A _____

(2) Nature of proceeding _____ N / A _____

(3) Grounds raised _____ N / A _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒

(5) Result _____ N / A _____

(6) Date of result _____ N / A _____

(b) As to any second petition, application or motion give the same information:

(1) Name of court _____ N / A _____

(2) Nature of proceeding _____ N / A _____

(3) Grounds raised _____ N / A _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐

(5) Result N/A

(6) Date of result N/A

(c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☐ No ☒

(2) Second petition, etc. Yes ☐ No ☒

(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

I WAS NOT AWARE AT THE TIME OF SENTENCING OF SECTION 28 USC. 2255 TO
VACATE SET ASIDE OR CORRECT SENTENCE BY A PERSON IN FEDERAL CUSTODY.

12. State *concisely* every ground on which you claim that you are being held in violation of the constitution, laws or treaties of the United States. Summarize *briefly* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting the same.

Caution: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of the grounds.

(a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.

(b) Conviction obtained by use of coerced confession.

- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (h) Denial of right of appeal.

A. Ground one: (A) CONVICTION OBTAINED BY PLEA OF GUILTY WHICH WAS

UNLAWFULLY INDUCED OR NOT MADE VOLUNTARILY OR WITH UNDERSTANDING OF NATURE OF THE CHARGE AND THE CONSEQUENCES OF PLEA.

Supporting FACTS (state *briefly* without citing cases or law) DEFENDANT WAS RUSHED BY COUNSEL TO PLEA GUILTY BASED AGAINST DEFENDANT, IMPROPER PRESSURE ON DEFENDANT TO PLEA GUILTY AFTER DEFENDANT REPEATLY TOLD COUNSEL "THAT IT WAS A LONGTIME"(SENTENCE).

B. Ground two: (I) DENIAL OF EFFECTIVE ASSISTANCE OF COUNSEL

Supporting FACTS (state *briefly* without citing cases or law) COUNSEL'S FAILURE TO NOTIFY THE COURT WHEN DIFFERENCES ARISE BETWEEN THE DEFENDANT AND COUNSEL. ALSO DEFENDANT'S SISTER WROTE A LETTER TO THE JUDGE STATING THAT DEFENDANT WAS NOT SATISFIED WITH COUNSEL. DEFENDANT WAS NOT GIVEN A CHANCE TO SPEAK.

C. Ground three: _____

Supporting FACTS (state *briefly* without citing cases or law) MOTION UNDER 28 USC.2255 TO VACATE, SET ASIDE OR CORRECT SENTENCE BY A PERSON IN FEDERAL CUSTODY.

D. Ground four: _____

Supporting FACTS (state *briefly* without citing cases or law) DEFENDANT FEELS THAT HIS CRIMINAL HISTORY POINTS ARE OVER STATED. SINCE HIS LAST CONVICTION WAS IN 1989 AND HIS FIRST WAS IN 1986, THE ONE IN 1986 AC URED 18 YEARS AGO. DEFENDANT WAS SENTENCED LESS THAN A YEAR. THE ONLY CASE WHICH DEFENDANT SERVED A LONG TERM WAS IN 1989. FIRST TIME IN STATE PRISON). FOR THAT REASON DEFENDANT FEELS HIS CRIMINAL HISTORY IS OVERSTATED PRIOR TO THE PRESENT CASE. (RE ENTRY).

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state *briefly* what grounds were not so presented, and give your reasons for not presenting them: I WAS NOT AWARE AT THE TIME OF SENTENCING OF MOTION

TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY A PERSON IN FEDERAL CUSTODY. 28 USC. 2255.

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?

Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of judgment attacked herein:

(a) At preliminary hearing MR. MELVIN NORRIS

(b) At arraignment and plea SAME

(c) At trial SAME

(d) At sentencing SAME

(e) On appeal _____

(f) In any post-conviction proceeding _____

(g) On appeal from any adverse ruling in a post-conviction proceeding _____

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: N/A

(b) Give date and length of the above sentence: N/A

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☒ No ☐

Wherefore, movant prays that the Court grant petitioner relief to which he or she may be entitled in this proceeding.

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

5/25/04
(Date)


Signature of Movant